HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Application No. 675 of 2001

Date of Decision : 30th March, 2006

~~A.F.R. (Approved for reporting)~~

Not approved for reporting.

Date Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Miscellaneous Appl. No. 675 of 2001
(Old No. 5762 of 1989)

M/s Piyoosh Leasing and Finance Ltd.
And two others … Applicants

Versus

M/s Hindustan Livestock Sales Corporation
B.O. Hardwar Road, Dehradun through Shri
Swaran Singh, Accounts Officer and another … Respondents

Sri M. C. Pandey, learned counsel for the applicants
Sri A. Rab, Addl. G.A. and Sri Chaudhary Sudhir Kumar & Sri Rajeev Mohan-A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

The present petition has been directed to quash the proceedings in case No. 176 of 1988 u/s 420 I.P.C., M/s Hindustan Livestock Sales Corporation Vs. M/s Piyoosh Leasing & Finance Ltd. and others pending in the court of Chief Judicial Magistrate, Dehradun.

Brief facts for the disposal of this petition are that the complainant-opp. party No. 1 filed a complaint u/s 420 I.P.C. in the court of Chief Judicial Magistrate, Dehradun wherein it has been alleged that his firm has a wide national and international experience in the filed of Livestock, Diary and Food Industries and his firm provides necessary consultancy to the other firms. It is also alleged that the accused-applicants visited the complainant in the year 1986 and certain projects were settled in between the applicants and the complainant for giving information and technology on some points and it was agreed that the applicants will pay 5% of the total project to the complainant as consultancy charges. The applicants paid a sum of Rs. 1,00,000/- to the complainant as a part payment for this consultancy. Agreement to this effect was also executed in between the parties that the complainant will supply them full detailed information including the technology and the complainant have been supplying information and technology form time to time to the

accused-applicants. It was also agreed that the complainant and the applicants will visit to U.K. and also visit to Spain to see and assess the working of the plant for which the accused-applicants shall pay Rs. 4,00,000/- to the complainant. Accordingly, the complainant firm went to U.K. at huge expenses but the accused-applicants postponed the visit of U.K. and Spain and also subsequently cancelled the said visit. Thereafter, the accused-applicants requested from the complainant to give them detail about the project and the complainant supplied the details to the applicant No. 2. The complainant requested the accused-applicants to make the payment of Rs. 3,75,000/- for the supply of the information and technology but the accused-applicant had no intention to pay this amount to the complainant. As such the accused-applicants have committed the offence u/s 420 I.P.C.

Thereafter the complainant examined Sri Swaran Singh u/s 200 Cr.P.C. and thereafter the accused-applicants were summoned by the trial court by taking cognizance u/s 420 I.P.C.

Feeling aggrieved by the said order, the present petition has been preferred.

Learned counsel for the applicants contended that the complaint if any is to be filed in the court of Kolkata as the complainant has himself alleged that the agreement was executed at Kolkata and there is a breach of same as alleged. Perusal of the record reveals that it was specifically agreed between the applicants and the complainant that they will sign written agreement at Kolkata on 20.05.1986 and the complainant had to go to Kolkata to sign the said agreement which was agreed upon at Dehradun. Apart this, the payment was demanded by the complainant from Dehradun as such the cause of action arose at Dehradun. In view of Section 178 of Cr.P.C. wherein an offence is committed partly in one local area and partly in another, it may be inquired or tried by a Court having jurisdiction over any of such local areas. In view of the above discussion, I am of the view that the contention of the learned counsel

for the applicants with regard to the jurisdiction of filling of the complaint is not tenable.

Learned counsel for the applicants contended that the facts of the complaint did not constitute the ingredients of the offence as provided u/s 420 I.P.C. It was further contended that the dispute between the applicants and the complaint-respondent No. 1 was purely of the civil nature arising out of the contractual relationship with regard to the commercial transaction. Even looking to the sworn statement, no case is made out to proceed against the applicants on the criminal side. It was further contended that the essential ingredients of the offence u/s 420 I.P.C. are not made out as there was no fraudulent and dishonest inducement. In order to constitute an offence of criminal breach of cheating the essential ingredients are :-

1. There should be fraudulent or dishonest inducement of a person by deceiving him.

2. The person so deceived should be entrusted to deliver any property to any person or to consent that any person shall retain any property or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived.

3. In cases covered by the said act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheating”.

In determining the question, it is to be kept in mind that distinction between mere breach of contract and the offence of cheating is a very fine one. It depends upon the intention of the accused at the time of the inducement, which may be judged by the subsequent conduct but this subsequent conduct is not the sole test. Mere breach of contract cannot give right to the criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. That is the time when the offence is said to have been committed. Therefore, it is the intention or mens rea, which is the gist of the offence to hold a person guilty of cheating

at the time of making the promise. From his mere failure to keep a promise subsequently such an intention at the beginning that is when he made the promise cannot be presumed. In the instant case, the parties decided to undertake a project which may be the only one of its kind in India. It is also alleged that the applicants on 03.02.1986 paid a sum of Rs. 1 lac to the complainant as part payment for the consultancy and for the expenses to be incurred by the firm in obtaining information for the accused-applicants. Thereafter, it is alleged in the complaint that the complainant supplied the necessary information and an agreement was signed on Kolkata 20.05.1986 in between the parties in pursuance of the said agreement and the complainant visited in U.K. at the behest of the accused and the accused also obtained visa for the same. From the perusal of the record, it is revealed that there was no criminal intention at the time of the entering into the contract. If there had been fraudulent and dishonest intention the accused would not have paid a sum of Rs. 1 lac towards the consultancy charges. At later point of time the accused had not paid the amount which was demanded by the complainant as the remaining consultancy charges. As such, the said transaction was a commercial transaction and it does not come within the purview of criminal offence. The complainant may file a civil suit for recovery of the said amount.

In view of the forgoing discussion, I am of the view that this is a purely case of civil nature and there is no mens rea on the part of the accused-applicants. Therefore the complaint, the proceeding thereafter and the order dated 10.02.1989 passed by the Chief Judicial Magistrate, Dehradun is liable to be quashed against the present applicants only and the same is quashed and the petition is allowed accordingly.

(J.C.S. RAWAT, J.)

30th March, 2006
Shiv